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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANTS 1 Ganesh Ram, S/o. Sudan Kumhar, aged about 32 years, Occupation Labour

2 Sahadram @ Mehet Ram, son of Sudan Kumhar, aged about 35 years, Occupation Labour

Both residents of village Malpani Batturakachar, Police Station Gharghoda, District Raigarh

Versus

RESPONDENT State of M.P., through District Magistrate, Raigarh (C.G.)

D.B. : Hon'ble Shri L.C. Bhadoo and
Hon'ble Shri Dhirendra Mishra, JJ.

2-4-2007

Shri Awadh Tripathi, Advocate for the appellants.

Shri Akhil Mishra, Panel Lawyer, for the respondent/State.

Today this appeal has been listed on I.A. No. 1 for early final hearing.

Counsel for accused-appellant Ganesh Ram argued that even though the accused-appellant has been directed to be released on bail, but he is not in a position to furnish bail bond. He is in detention since 1997, thereby he is in detention for more than 9 year. This appeal is likely to take some more time for final hearing, to which counsel for the respondent has no objection. Therefore, with consent of the parties, this appeal is finally heard.

Oral judgment dictated on *Dais*.

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

This appeal is directed against the judgment of conviction and order of sentence dated 5-2-2000 passed by 2nd Additional Sessions Judge, Raigarh in S.T. No. 152/97, whereby the learned Additional Sessions Judge after holding accused/appellants guilty for commission of offence under Section 302 read with

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Section 34 of I.P.C., sentenced each of them to undergo imprisonment for life and to pay a fine of Rs. 5000/-, in default of payment of fine, to further undergo one year's R.I.

2. Prosecution case, in brief, is that on 18-4-1997, there was a marriage in the house of Dharamsingh. Deceased Ghasiaram and his wife Jankibai (P.W. 13) went to their house after taking meal. They were sitting in verandah of their house. At that time, accused Sahadram alias Mehetram called Ghasiaram, on which, Ghasiaram came out from the house. His wife Jankibai also came out from the house, where accused Ganeshram was already present. Accused Sahadram asked deceased Gasiaram as to why he is looking at his wife with ill intention. He caught Ghasiaram from his testicles and threw him on the ground. Accused Ganeshram attacked him with a wooden stick (Genda) on his head, as a result of which, Ghasiaram sustained injuries on the head. P.W. 14 Shrimoti Bai came to intervene, on which Ganesh slapped her. P.W. 12 Maheshram came on the scene after hearing the sound of commotion and saw that blood was oozing out of the head. At that time, P.W. 3 Phoolsingh also reached the scene of occurrence. After seeing the scene, he lodged report Ex. P-3 on 19-4-1997 in Police Station, Gharghoda. Ghasiaram was taken to hospital, Gharghoda for treatment but he could not be treated therefore, his family members took him to his residence, ultimately he succumbed to the injuries on 3-5-1997 at 12.00 noon. Injuries of Ghasiaram were examined by Dr. S.N. Kesari (P.W.8). He gave report Ex. P-12. Dr. M.D. Joshi (P.W. 12) took X-ray of the head and gave report Ex. P-1. Dr. M.L. Thawait conducted post mortem, prepared Ex. P-2. He found that there was a depressed fracture on parietal occipital region in oval shape in size of 3" x 2". Clotted blood was present. There was injury on left testicle. The doctor opined that cause of death was coma and shock as a result of the head injury. Death was

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homicidal in nature. Investigating officer after giving notice Ex. P-6 to Panchas, prepared inquest Ex. P-7 on body of Ghasiaram. Site plant Ex. P-5A was prepared. Weapon of offence- wooden stick (Genda) was seized from Ganeshram under Ex. P-8. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate Court First Class, Gharghoda who in turn committed the case to the Sessions Judge from where, learned 2nd Additional Sessions Judge, Raigarh received the case on transfer for trial.

Prosecution in order to establish charge against the accused-appellants examined 16 witnesses. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which both the accused persons denied the material appearing against them and said that they have been falsely implicated in the crime. Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused persons as aforementioned.

We have heard Shri Awadh Tripathi on behalf of the appellants and Shri Akhil Mishra on behalf o the State.

Shri Tripathi has not disputed homicidal death of Ghasiaram. Moreover, P.W. 13 Jankibai wife of the deceased has categorically stated that the accused Ganeshram attacked Ghasiaram with a lathi on his head, as a result of which, Ghasiaram sustained injuries, which has been corroborated by evidence of P.W. 2 Dr. M.L. Thawait who has stated that there was a depressed fracture on parietal occipital region and the death was due to coma and shock on account of head injury, death was homicidal in nature, therefore, in view of the above medical and ocular evidence, it is established that death of Ghasiaram was homicidal in nature.

As far as involvement of accused appellants in crime in question is concerned, P.W. 15 Maniyarobai has turned hostile. She has not supported

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prosecution case. P.W. 14 Shrimoti Bai even though in examination-in-chief has stated that Ganeshram attacked Ghasiaram with a wooden stick but in cross-examination, she has stated that she does not know whether accused Ganesh and Sahadram came to their residence on the fateful night or not. She did not see anybody assaulting Ghasiaram. She only saw that Ghasiaram was lying there. Therefore, evidence of this witness is also of no help to the prosecution. P.W. 13 Jankibai has categorically stated that she along with her husband was sitting at their residence. At that time, Sahadram came and called her husband. When her husband was coming out of the house, she also followed him. Then she saw that Sahadram and Ganeshram were standing at the door. Accused persons caught his testicles and dragged him. Thereafter he fell down. Ganeshram attacked Ghasiaram with lathi (Genda). She tried to intervene but they did not stop. As a result of injuries, her husband fell down. Blood started oozing out of the injuries. Learned counsel for the accused Ganeshram argued that in para 5 of the cross-examination, this witness has stated that she did not see anybody attacking Ghasiaram, therefore, she is not eyewitness. But in the same para, she has categorically stated that Bhagirathi also witnessed the crime and he tried to snatch Lathi from Ganeshram. She has also stated that it is incorrect to say that she did not see anybody attacking the deceased with lathi. Presence of this witness in her house was but natural. So far as P.W. 3 Phoolsing is concerned, in fact he is not an eyewitness. When he was at his residence, then Maniyarobai (P.W. 15) informed him about the incident. He immediately reached the spot and saw Ghasiaram in injured condition.

Therefore, we do not find any substance in the argument of Shri Tripathi. Therefore, from the evidence of P.W. 13 Jankibai, it is established that accused Ganeshram attacked the deceased with lathi on head, as a result of which,

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Ghasiaram sustained fracture, which ultimately proved fatal which has been established by the evidence of P.W. 2 Dr. M.L. Thawait who conducted post mortem on the body of Ghasiaram.

Allegation against Sahadram is that he caught the testicles of the deceased and dragged him. In fact he pressed testicles also but as per medical evidence, there is nothing that it was one of the reasons for death of Ghasiaram. Moreover, there is nothing in the evidence that Sahadram was sharing common intention with Ganeshram to cause death of Ghasiaram. Sahadram was armless whereas Ganeshram was carrying lathi by which he attacked Ghasiaram, therefore, that was individual act of Ganeshram and act of Sahadram does not establish common intention, therefore, Sahadram cannot be held liable vicariously with the add of Section 34 of I.P.C. Therefore, offence against Sahadram does not extend beyond Section 323 of I.P.C.

Shri Awadh Tripathi argued that Ghasiaram died after 15 days of the incident because he was not treated properly and he was discharged from the hospital. Moreover there is nothing on record to establish that the accused Ganeshram attached the deceased with intention to cause his death. In order to appreciate the argument advanced by Shri Tripathi, we have perused the evidence of P.W. 13 Jankibai, who has stated that in fact, Sahadram called her husband out of the house and when he went out of the house, Ganeshram attacked him on head. Moreover, the doctor has not stated in his evidence that the injury sustained by Ghasiaram was sufficient in the ordinary course of nature to cause death, therefore, it cannot be inferred that Ganeshram attacked Ghasiaram with intention to cause his death. However, the manner in which the accused – ~~Sahadram~~ (Ganesh Ram) attacked the deceased with lathi on his head, it can safely be inferred that accused Ganeshram had definite knowledge that by attacking the deceased with lathi on

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head, he may likely to cause death of Ghasiaram. Therefore, offence under Section 304-II is made out against accused Ganeshram.

In the result, appeal of accused appellants partly succeeds. Their conviction under Section 302 read with Section 34 of I.P.C. and sentence imposed upon them are set aside. Instead thereof, accused – Ganeshram is convicted under Section 304-II of I.P.C. and he is sentenced to undergo ten years' R.I. It is stated that he is in detention since 16-6-1997 till date, therefore he shall be entitled for set off against the above sentence.

As far as accused Sahadram is concerned, he is convicted under Section 323 of I.P.C. and sentenced to undergo one year's R.I. It is stated that he remained in detention from 5-5-1997 till the High Court granted bail to him on 5-7-2000, thereby he has already served the sentence. His bail bonds are discharged. He need not surrender.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge